

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:22-CV-00167-KDB-DCK**

DAVID DEAN,

Plaintiffs,

v.

**DARREN CAMPBELL,
DARREN WILLIAMS,
JOHN FLEMING KISSINGER,
BRIAN MICHAEL CASHION,
NICHOLAS JARED WHEELER,
COUNTY OF IREDELL,
ADAM LOGAN CLARK, AND
TERRY ADAM AUSTIN,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants’ Motions to Dismiss (Doc. No. 16), the Memoranda and Recommendations (“M&R”) of the Honorable United States Magistrate Judge David Keesler to in part grant and in part deny the motion, (Doc. No. 24), and Defendants’ Objection to the M&R (Doc. No. 25). The Court has carefully considered this motion, the parties’ briefs and other pleadings of record in this action. The Court concludes after its *de novo* review that the recommendations in the M&R are correct and in accordance with law for the reasons thoroughly discussed in the M&R.

A district court may designate a magistrate judge to “submit to a judge of the court proposed findings of fact and recommendations for the disposition” of certain pretrial matters, including motions to remand. 28 U.S.C. § 636(b)(1). Any party may object to the magistrate judge’s proposed findings and recommendations, and the court “shall make a *de novo*

determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). Objections to the magistrate’s proposed findings and recommendations must be made “with sufficient specificity so as reasonably to alert the district court of the true ground for the objection.” *United States v. Midgette*, 478 F.3d 616, 622 (4th Cir.), *cert. denied*, 551 U.S. 1157 (2007). However, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation” and need not give any explanation for adopting the M&R. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005); *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). After reviewing the record, the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Court has thoroughly reviewed the record and finds that the M&R should be affirmed and adopted in all respects. Specifically, 1) Plaintiff has pled plausible constitutional violations against the defendant detention officers for which they may not be entitled to qualified immunity, 2) Plaintiff has pled a plausible *Monell* deliberate indifference claim for failure to train against the governmental defendants, 3) Plaintiff is not entitled to pursue claims against individual defendants in their official capacities, 4) Plaintiff is partially entitled to further pursue its assault and battery, negligence and gross negligence claims to the extent described in the M&R, 5) Plaintiff’s negligent training and negligent supervision claim against the governmental defendants under 42 U.S.C. § 1983 should be dismissed, 6) Plaintiff’s separate claim under Section 1983 for excessive force against all Defendants for violation of rights under the Eighth Amendment rights is duplicative of his third claim for excessive force under Section 1983 and

should be dismissed, 7) Plaintiff's North Carolina state constitutional claim for deprivation of life outside the law of the land should be dismissed because an adequate state remedy is available and 8) Plaintiff is entitled to further pursue state law claims for wrongful death and injury to prisoner by a jailer in violation of N.C. Gen. Stat. § 162-55.

ORDER

NOW THEREFORE IT IS ORDERED THAT:

1. The findings and conclusions of the Magistrate Judge in the M&R, (Doc. No. 24), are adopted;
2. Defendants' Motion to Dismiss (Doc. No. 16) is **GRANTED in part and DENIED in part** as recommended in the M&R;
3. Plaintiff's objections to the M&R (Doc. No. 25) are **OVERRULED**; and
4. This case shall proceed towards trial on the merits on the remaining claims in the absence of a voluntary resolution of the dispute among the parties.

SO ORDERED ADJUDGED AND DECREED.

Signed: August 16, 2023



Kenneth D. Bell
United States District Judge

